

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
 JIMMY LY)
)
 Notice of Failure to Comply)
 With Hawaii Revised Statutes)
 and Commission's Regulations)
 Order to Show Cause Why)
 Respondent's Operating)
 Authority Should Not Be)
 Suspended or Revoked.)
 _____)

DOCKET NO. 03-0319

DECISION AND ORDER NO. 21156

Filed July 22, 2004
At 11:00 o'clock A .M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2004 JUL 26 A 8:57

RECEIVED

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)	
JIMMY LY)
)
Notice of Failure to Comply)
With Hawaii Revised Statutes)
and Commission's Regulations)
Order to Show Cause Why)
Respondent's Operating)
Authority Should Not Be)
Suspended or Revoked.)
_____)

Docket No. 03-0319
Decision and Order No. 21156

DECISION AND ORDER

I.

Introduction

On February 24, 2004, the duly appointed hearings officer issued Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer ("recommended decision") for this matter. The recommended decision was served upon JIMMY LY ("Respondent") on February 24, 2004 via first class mail, to which Respondent filed no written exceptions.

Upon a review of the entire record in this matter and pursuant to Hawaii Revised Statutes ("HRS") § 269-6, we conclude that the recommended decision regarding this matter, attached hereto as Exhibit A, should be adopted in toto as the commission's final decision and order in this matter.

II.

Orders

THE COMMISSION ORDERS:

1. The recommended decision regarding this matter, attached hereto as Exhibit A, is adopted in toto as the commission's final decision and order in this matter.

2. The penalties and interest of \$522.56 that the commission assessed, pursuant to HRS § 271-27(i) and Hawaii Administrative Rules §§ 6-62-24(b), 6-62-24(c), and 6-62-42(d), for Respondent's untimely annual financial report filing and annual motor carrier gross revenue fee payment are reduced to zero.

3. Order No. 20520, filed on October 27, 2003, is vacated.

DONE at Honolulu, Hawaii this 22nd day of July, 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

Catherine P. Awakuni
Catherine P. Awakuni
Commission Counsel

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

03-0319.sl

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----))	
JIMMY LY)	DOCKET NO. 03-0319
)	
Notice of Failure to Comply)	FINDINGS OF FACT
With Hawaii Revised Statutes)	CONCLUSIONS OF LAW, AND
and Commission's Regulations)	RECOMMENDED DECISION
Order to Show Cause Why)	AND ORDER OF
Respondent's Operating)	HEARINGS OFFICER
Authority Should Not Be)	
Suspended or Revoked.)	

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED DECISION AND ORDER OF HEARINGS OFFICER

I.

INTRODUCTION

By Order No. 20520, filed on October 27, 2003, JIMMY LY ("Respondent"), was ordered to appear before the commission on November 26, 2003, at 9:00 a.m. to show cause why Respondent's certificate of public convenience and necessity ("CPCN") number 1499-C should not be suspended or revoked for failing to file an annual financial report ("AFR"), pursuant to Hawaii Revised Statutes ("HRS") § 271-25 and Hawaii Administrative Rules ("HAR") § 6-62-42, and to pay the accompanying motor carrier gross revenue fee ("Fee"), pursuant to HRS § 271-36 and HAR § 6-62-24(a) ("Order to Show Cause Hearing").

EXHIBIT A

An Order to Show Cause Hearing was held at 9:00 a.m. on November 26, 2003, at the Public Utilities Commission Hearing Room, 465 South King Street, Room B-3. Respondent represented himself at the hearing. Hearings officer Benedyne S. Stone presided over the hearing.

Based upon a review of the record and the testimony presented at the hearing, the issue is whether Respondent's CPCN should be suspended or revoked for Respondent's failure to file an AFR and to pay the Fee, in violation of the State of Hawaii motor carrier laws, rules, and regulations.

Having considered the testimony and other evidence presented at the Order to Show Cause Hearing, and the entire record in this matter, this hearings officer hereby renders the following findings of fact, conclusions of law, and recommended decision and order.

II.

FINDINGS OF FACT

1. Respondent testified that in June 2001, he submitted an application to the commission through a third party, to reflect, in part, Respondent's new motor vehicle.¹

2. Respondent testified that in August 2003, also through a third party, he again submitted an application to the commission.

¹Respondent's application was an application to extend his existing motor carrier authority by dropping the 1-to-7 passenger classification and replacing it with authority in the 8-to-25 passenger classification.

3. Respondent testified that he did not operate as a motor carrier during the year 2002 while he was waiting for his application to be processed.

4. On November 14, 2003, Respondent filed his AFR and paid his Fee.²

5. On November 14, 2003, Respondent was notified by the commission of his delinquent fee of \$522.56 ("Delinquent Fee"), pursuant to HRS § 271-27(i) and HAR § 6-62-42, for failure to file his AFR and pay his Fee in a timely manner.

III.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the hearings officer makes the following conclusions of law. Any findings of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

1. HRS § 271-19 authorizes the commission, after notice and hearing, to suspend or revoke any CPCN, in part or in whole, if the holder is found to be in violation of any of the provisions of chapter 271, HRS.

2. Pursuant to HAR § 6-62-42(a), Respondent's 2002 AFR was due to the commission "by April 30 of [2003]".

3. Pursuant to HAR § 6-62-24(a), Respondent's Fee for 2002 was due to the commission "on or before April 30" of 2003.

²Pursuant to HAR § 6-61-48, this hearings officer takes official notice of certain facts contained in Respondent's motor carrier records on file with the commission.

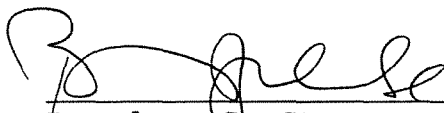
4. Based on the above-stated findings of fact, this hearings officer concludes that, because Respondent failed to file his AFR and to pay his Fee by April 30, 2003, Respondent was in violation of HRS § 271-25 and HAR §§ 6-62-42(a) and 6-62-24(a).

IV.

RECOMMENDED DECISION AND ORDER

Based on the foregoing, this hearings officer recommends that Respondent's CPCN should not be suspended or revoked, because Respondent has belatedly complied with HRS § 271-25 and HAR § 6-62-42 and HRS § 271-36 and HAR § 6-62-42(a). Considering mitigating evidence presented at the Order to Show Cause Hearing, specifically, that Respondent submitted an application to extend his existing motor carrier authority, and his testimony that while waiting for the application to be processed he did not act as a motor carrier of persons because his application had not been processed, this hearings officer also recommends that Respondent's Delinquent Fee of \$522.56 be reduced to zero.

DATED: Honolulu, Hawaii this 24th day of February, 2004.


Benedyne S. Stone
Hearings Officer
Public Utilities Commission

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (VIA PICKUP)
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

JIMMY LY
35 North Kukui Street, #310
Honolulu, Hawaii 96817

Audrey Chiguen
for Citations Clerk

DATED: February 24, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21156 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

JIMMY LY
35 North Kukui Street, #310
Honolulu, HI 96817



Karen Higashi

DATED: July 22, 2004